

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**CORRECTED  
FISCAL NOTE**

**HB 2370 - SB 2232**

February 7, 2012

**SUMMARY OF BILL:** Establishes requirements for making determinations whether certain affiliates have physical presence in the state to establish nexus for sales and use tax purposes. This bill will effectively exempt any taxpayer from collecting and remitting sales and use tax that: (1) places one or more distribution facilities in service, directly or through a third party, after January 1, 2011, and before January 1, 2014, (2) makes, or causes to be made, through a third party, a capital investment of at least \$350,000,000 after January 1, 2011, and before January 1, 2014, (3) creates at least 3,500 qualified jobs after January 1, 2011, and before January 1, 2014, and (4) maintains at least 3,500 qualified jobs until January 1, 2016. Establishes a repeal date for this bill on the earlier of: (1) January 1, 2014, (2) when a person's affiliate or the third party fails to meet the requirements established by this bill, or (3) the effective date of a law enacted by the United States Congress that authorizes this state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state. Establishes the requirement that this bill only applies if the taxpayer enters a written agreement pursuant to which the taxpayer and its affiliates will collect Tennessee sales and use tax after the earliest event that causes repeal of this bill. Defines the terms "affiliate," "distribution facility," and "fulfillment services." Establishes requirements for persons making internet sales to notify taxpayers that internet orders are subject to sales and use tax.

**ESTIMATED FISCAL IMPACT:**

On January 26, 2012, a fiscal note was issued estimating a fiscal impact as follows:

*Forgone State Revenue - \$5,710,100/FY11-12  
\$22,840,600/FY12-13  
\$11,420,300/FY13-14*

*Increase State Revenue - \$11,420,300/FY13-14  
\$22,840,600/FY14-15 and Subsequent Years*

*Forgone Local Revenue - \$2,412,400/FY11-12  
\$9,649,400/FY12-13  
\$4,824,700/FY13-14*

*Increase Local Revenue - \$4,824,700/FY13-14  
\$9,649,400/FY14-15 and Subsequent Years*

Due to an incorrect assumption concerning sales of qualified taxpayer, this impact was in error. Based upon additional information, the estimated impact is:

**(CORRECTED)**

**Forgone State Revenue - \$4,387,800/FY11-12**

**\$17,551,200/FY12-13**

**\$8,775,600/FY13-14**

**Increase State Revenue - \$8,775,600/FY13-14**

**\$17,551,200/FY14-15 and Subsequent Years**

**Forgone Local Revenue - \$1,853,700/FY11-12**

**\$7,414,800/FY12-13**

**\$3,707,400/FY13-14**

**Increase Local Revenue - \$3,707,400/FY13-14**

**\$7,414,800/FY14-15 and Subsequent Years**

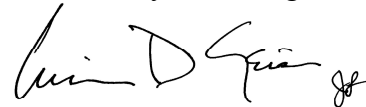
**Assumptions:**

- Based on information provided by the Department of Revenue (DOR), one taxpayer will meet the criteria specified in this bill exempting such taxpayer from collecting and remitting sales and use tax. This qualified taxpayer had approximately \$34.2 billion of net sales in 2010; approximately \$18.7 billion (or 54.68 percent) were sales made in North America.
- Net sales for the qualified taxpayer in 2011 were approximately \$48.07 billion. It is estimated that 54.68 percent of such sales (or \$26.28 billion) were made in North America.
- Given that Tennessee represents two percent of the national population, Tennessee online sales by the qualified taxpayer in 2011 are estimated to be approximately \$525,600,000 (\$26.28 billion x 2.0%). This number is assumed to remain constant in subsequent years.
- DOR estimates that 50 percent of these online sales were sales for which no sales and use tax was collected or remitted.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent.
- Uncollected state sales tax revenue and uncollected local option sales tax revenue is estimated to be \$18,396,000 ( $\$525,600,000 \times 50.0\% \times 7.0\%$ ) per year and \$6,570,000 ( $\$525,600,000 \times 50.0\% \times 2.5\%$ ) per year respectively.
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.5925 percent of state sales tax revenue as state-shared sales tax revenue. Therefore, the net uncollected state revenue is estimated to be \$17,551,164 [ $\$18,396,000 \times (100\% - 4.5925\%)$ ]; total uncollected local revenue is estimated to be \$7,414,836 [ $\$6,570,000 + (\$18,396,000 \times 4.5925\%)$ ].

- This bill effectively provides the authorization for the qualified taxpayer to become exempt from collecting sales and use tax revenue until the bill is repealed. Given that the revenue is not currently being collected or remitted, the state will forgo an estimated \$17,551,164 in FY12-13, and local governments will forgo an estimated \$7,414,836 in FY12-13.
- This act shall take effect upon becoming law. However, it is assumed the bill will become law on April 1, 2012. As a result, forgone state revenue for FY11-12 is estimated to be 25 percent of the first full-year impact (FY12-13), which is estimated to be \$4,387,791 ( $\$17,551,164 \times 25\%$ ); forgone local revenue for FY11-12 is estimated to be \$1,853,709 ( $\$7,414,836 \times 25\%$ ).
- Given the provisions of this bill will be repealed no later than January 1, 2014, forgone state revenue for FY13-14 is estimated to be 50 percent of the first full-year impact (FY12-13), which is estimated to be \$8,775,582 ( $\$17,551,164 \times 50\%$ ); forgone local revenue for FY13-14 is estimated to be \$3,707,418 ( $\$7,414,836 \times 50\%$ ).
- Beginning January 1, 2014, the qualified taxpayer will begin collecting and remitting state and local sales tax. As a result, the increase in state revenue for FY13-14 is estimated to be \$8,775,582; the increase in local revenue is estimated to be \$3,707,418.
- Beginning July 1, 2014, the recurring increase in state revenue is estimated to be \$17,551,164; the recurring increase in local revenue is estimated to be \$7,414,836.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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